

# EXHIBIT 1

<b>Deposition</b>	<b>Plaintiffs' Designation</b>	<b>Defendants' Corresponding Counter Designation</b>	<b>Reason that Defendants' Counter Designation Must be Considered According to Fed.R.Civ.P 32(a)(4)</b>
Michael Baksa, March 9, 2005	39:7-41:8	39:7-41:8	Testimony designated by both parties all relates to a specific memo from Dr. Peterman (Plaintiffs previously objected to this section of Defendants' counter designation, but in Plaintiffs' new designations sent 10/10/05, they have also included this section)
	137:23-138:4	138:5-9, 19-25	Counter designation is the response to the question asked in Plaintiffs' designation
	144:13-18, 146:5-17, 147:6-15	149:7-150:16	Testimony designated by Defendants is part of an uninterrupted line of questioning regarding scientific theory designated by Plaintiffs

**In The Matter Of:**

*Tammy Kitzmiller, et al. v.  
Dover Area School District, et al.*

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*Michael Baksa  
March 9, 2005*

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**Word Index included with this Min-U-Script®**

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[1] Q: After June or it could have been in June?  
 [2] A: It could have been in June, yeah.  
 [3] Q: Do you remember the circumstances in which you  
 [4] heard about intelligent design? Was it, for  
 [5] example, a public school board meeting, a  
 [6] discussion with a school board member or  
 [7] otherwise?  
 [8] A: I don't.  
 [9] Q: Do you remember anything about the substance of  
 [10] what you heard the first time you heard about  
 [11] it?  
 [12] A: No.  
 [13] Q: The first time you heard about it, was it in  
 [14] the context of the Dover Area High School  
 [15] biology curriculum?  
 [16] A: I don't remember that.  
 [17] Q: When was the first time you heard of the book  
 [18] Of Pandas and People?  
 [19] A: When Bill gave it to me, Mr. Buckingham.  
 [20] MR. ROTHSCCHILD: Let me mark this document  
 [21] as P-9.  
 [22] (P Deposition Exhibit Number 9 marked for  
 [23] identification.)  
 [24] BY MR. ROTHSCCHILD:  
 [25] Q: Do you recognize the document we've marked as

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[1] P-9?  
 [2] A: Yes.  
 [3] Q: Is this a memorandum that you received on or  
 [4] around April 1st, 2003 from the principal,  
 [5] Trudy Peterman?  
 [6] A: Yes.  
 [7] Q: Could you review this document and let me know  
 [8] whether there's anything in it that you —  
 [9] well, review the document and let me know  
 [10] whether there's anything in it you think is  
 [11] incorrect.  
 [12] A: Okay. There are a number — just the first two  
 [13] pages or do you want me to do the rest?  
 [14] Q: I think we can probably just look at the first  
 [15] two pages for purposes of my question.  
 [16] A: There are a number of errors and inaccuracies.  
 [17] Q: Could you describe them?  
 [18] A: First, Trudy — Dr. Peterman was not at the  
 [19] meeting — was not at the — or was not present  
 [20] when I had a conversation with Mrs. Spahr that  
 [21] generated this memo.  
 [22] I never told Mrs. Spahr that the board  
 [23] wanted creationism taught. Dr. Peterman in  
 [24] many instances overreacts to instances and  
 [25] jumps the gun and I think this is a good

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[1] example of that.  
 [2] My conversation with Bert Spahr was simply  
 [3] a heads up that there was still, you know, some  
 [4] talk about some board members of presenting  
 [5] some alternative theory. I did not say that  
 [6] there was creationism, nor did any board member  
 [7] ever say to me that they wanted creationism  
 [8] taught in the classroom.  
 [9] Additionally, she talks about creationism  
 [10] should still be — Dr. Peterman says I advise  
 [11] and continue to mention that creationism is  
 [12] another alternate theory of evolution. That's  
 [13] Dr. Peterman acting on her own.  
 [14] The only information I have is that I did  
 [15] know that some of our teachers before teaching  
 [16] the evolution unit would mention other  
 [17] theories. They might mention creationism, but  
 [18] there was no — at this point there was no  
 [19] directive from the board or administration for  
 [20] them to do so.  
 [21] So the way I reacted to this is I ignored  
 [22] this because the board was not putting forth  
 [23] any definite plans or content or curriculum to  
 [24] be implemented.  
 [25] Mr. Bonsell at a board retreat, where

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[1] there's administrators all around, had, just in  
 [2] talking about something, mentioned this 50/50.  
 [3] He did not talk to me personally about that,  
 [4] nor direct that to happen. And I simply took  
 [5] that back to Bert Spahr just to give her a  
 [6] heads up that there are board members that are  
 [7] still looking at alternatives that are being  
 [8] presented.  
 [9] Q: You've got a lot packaged in here. First of  
 [10] all, you said ignored this. Can I take from  
 [11] that that you did not respond to Ms. Peterman?  
 [12] A: Correct.  
 [13] Q: Verbally or in writing?  
 [14] A: Correct.  
 [15] Q: Did you have any follow-up conversation with  
 [16] Ms. Spahr in reaction to this memo?  
 [17] A: That I don't remember, but I would be talking  
 [18] to Mrs. Spahr continually anyway as long as  
 [19] there was some interest in presenting  
 [20] alternative theories and since we were working  
 [21] on the science curriculum.  
 [22] Q: This is a memo from April 1st, 2003 and you  
 [23] said — the way you started your answer was  
 [24] that there was still some talk about presenting  
 [25] an alternative theory. What do you mean still

[1] some talk? Had there been talk prior to April  
[2] 1st, 2003 about teaching something different in  
[3] the biology curriculum?  
[4] **A:** During the first year of the science curriculum  
[5] cycle Mr. Bonsell was the chair of the board  
[6] curriculum committee and Mr. Bonsell had  
[7] expressed concerns about the presentation of  
[8] Darwin's theory in the book and the lack of  
[9] alternative theories.  
[10] **Q:** And do you remember, you know, using this April  
[11] 1st, 2003 as a marker, when he was raising this  
[12] issue?

[13] **A:** I remember it being in the fall, early in the  
[14] 2002 school year.

[15] **Q:** Now, you said that at a board retreat he raised  
[16] the concept of 50/50. Is this a retreat that  
[17] you were at?

[18] **A:** Yes.

[19] **Q:** And when he used the word 50/50, what was he  
[20] referring to?

[21] **A:** I believe Mr. Bonsell was referring that if we  
[22] spent a day teaching Darwin's theory we should  
[23] spend a day teaching another theory.

[24] **Q:** When he said that, what was he talking about?

[25] **MR. GILLEN:** Objection to the extent it

[1] calls for speculation.

[2] **BY MR. ROTHSCHILD:**

[3] **Q:** What was your understanding of what he was  
[4] talking about?

[5] **MR. GILLEN:** Objection, foundation.

[6] **BY MR. ROTHSCHILD:**

[7] **Q:** You can answer.

[8] **A:** I don't know.

[9] **Q:** So he says 50/50 one theory and something else  
[10] and you have no idea what he's talking about?

[11] **A:** That's correct.

[12] **Q:** And he's not using the words intelligent design  
[13] here?

[14] **A:** No.

[15] **Q:** But in your memory, he also did not use the  
[16] word creation?

[17] **A:** That's correct.

[18] **Q:** You're sitting here listening to this and you  
[19] have responsibility for a curriculum. Did you  
[20] ask Mr. Bonsell what other possible theories  
[21] are you talking about?

[22] **A:** I did have a conversation with him after that.  
[23] Initially I think his concern was just that our  
[24] teachers don't present Darwin's theory as the  
[25] sole theory, make students aware that there are

[1] other theories out there.

[2] When I heard this 50/50, that was  
[3] something new, I hadn't heard that before. I  
[4] do remember having a conversation with him  
[5] afterwards trying to clarify that a little bit.  
[6] However, in that conversation Mr. Bonsell  
[7] indicated to me just some of his concerns with  
[8] the presentation of Darwin in the book and some  
[9] of the premises that students might be led to.  
[10] No alternative theory was presented to me by  
[11] Mr. Bonsell.

[12] I had raised the question that if we're  
[13] presenting an alternative theory and if that  
[14] theory is about the origins of life it becomes  
[15] problematic because whose theory would we  
[16] present and whose story of the origins of life  
[17] would we present. And I never got anything  
[18] directly back from him that this is what we  
[19] should be presenting.

[20] **Q:** And when he was using the word other theories,  
[21] did he say other scientific theories?

[22] **A:** I don't remember.

[23] **Q:** Did you understand him to be referring to other  
[24] scientific theories?

[25] **A:** Well, he was speaking about other theories of

[1] evolution, Darwin's scientific evolution. So

[2]  
[3] **Q:** But what else is there and did you ask him that  
[4] question?

[5] **A:** No.

[6] **Q:** You said that he expressed his concerns about  
[7] some of the premises that students could draw  
[8] from what they were being taught about Darwin's  
[9] theory of evolution. What do you mean by that?

[10] **A:** Mr. Bonsell expressed concerns that Darwin's  
[11] theory was presented in the book as a fact and  
[12] as the only theory.

[13] **Q:** And why did he have a problem with that?

[14] **MR. GILLEN:** Objection, speculation.

[15] **BY MR. ROTHSCHILD:**

[16] **Q:** Did he say why he had a problem with that?

[17] **A:** No.

[18] **Q:** You did communicate — I take it this memo is  
[19] correct in referring to the fact that you  
[20] communicated to Ms. Spahr issues being raised  
[21] by a board member. Is that fair?

[22] **A:** Yes.

[23] **Q:** And was that board member Mr. Bonsell?

[24] **A:** Yes.

[25] **Q:** And what did you tell Mrs. Spahr?



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[1] A: I really don't recall. I don't think it was a  
[2] long conversation. I really don't remember it  
[3] clearly.

[4] I believe I simply gave her a heads up  
[5] that now I had heard that there might — that  
[6] Mr. Bonsell might be asking for a 50/50 split.  
[7] Really my intent was just to keep her informed,  
[8] to keep her in the loop and let her know that  
[9] at some point, whenever the board would give us  
[10] clear direction about what they might want  
[11] done, we may need to look at that and may need  
[12] to do something.

[13] Q: How did Mrs. Spahr respond to that?

[14] A: Mrs. Spahr was throughout this, from the very  
[15] first instance where she would have heard of  
[16] board concerns with the presentation of  
[17] Darwin's theory is the only theory, I think  
[18] from the very beginning Mrs. Spahr was very  
[19] concerned that creationism would be required to  
[20] be taught in classrooms.

[21] Q: And did she express that to you in this  
[22] discussion in which you reported Mr. Bonsell's  
[23] comments?

[24] A: I don't remember in particular, but Mrs. Spahr  
[25] expressed that concern to me on a number of

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[1] occasions.

[2] Q: When you heard Mr. Bonsell say that he wanted  
[3] some 50/50 split did you have a concern that  
[4] what he wanted taught alongside Darwin's theory  
[5] was creationism or some religious account of  
[6] the origins of life?

[7] A: I don't know. I mean, I didn't know what his  
[8] intentions were.

[9] Q: And just to make sure I understand your answer.  
[10] After you received this memo, you didn't  
[11] respond to Ms. Peterman, correct?

[12] A: Yes.

[13] Q: Do you have any recollection of speaking to Ms.  
[14] Spahr, who also received this memo, about what  
[15] Mrs. Peterman had written about her  
[16] understanding of what you and Ms. Spahr talked  
[17] about?

[18] A: I don't remember doing that.

[19] MR. ROTHSCHILD: Let's take a break.

[20] (Recess taken)

[21] BY MR. ROTHSCHILD:

[22] Q: Mr. Baksa, I asked you the question earlier in  
[23] the deposition about whether any board member  
[24] had expressed his desire that creationism be  
[25] taught at Dover schools and you said no.

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[1] Did any board member or the board  
[2] collectively ever ask you or express an  
[3] interest in purchasing a biology book that  
[4] included creationism?

[5] A: No board member ever said that to me directly.

[6] Q: You used the word directly. Why did you say  
[7] that?

[8] A: I believe at the June, 2004 school board  
[9] meeting in talking about our status of the  
[10] selection of the biology book, for the first  
[11] time I believe in — I don't remember the exact  
[12] wording, but I remember Mr. Buckingham  
[13] mentioned creationism and that was the first  
[14] time I heard that. But afterwards I was never  
[15] directed from the board curriculum committee or  
[16] from Mr. Buckingham specifically to look for a  
[17] text with creationism in it.

[18] Q: Without, you know, expecting you to precisely  
[19] quote Mr. Buckingham, what do you remember him  
[20] saying about creationism?

[21] A: I just remember that he said creationism.

[22] Q: Did he say anything about wanting a biology  
[23] text that included creationism?

[24] A: I don't remember that.

[25] Q: You recognize Ms. Callahan, who's in the room?

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[1] A: Yes.

[2] Q: And you understand she's one of the plaintiffs  
[3] in this lawsuit?

[4] A: Yes.

[5] Q: Do you remember ever saying to her that the  
[6] board members — the board wanted a biology  
[7] text that included creationism?

[8] A: No.

[9] Q: I'm going to mark another exhibit as P-10.

[10] (P Deposition Exhibit Number 10 marked for  
[11] identification.)

[12] BY MR. ROTHSCHILD:

[13] Q: You see that on P-10 —

[14] A: Which one?

[15] Q: There's two pages of P-10 and on each page  
[16] there are some handwritten notes that appear to  
[17] say "Given to me by Baksa spring 2004". Do you  
[18] recognize —

[19] MR. GILLEN: Objection, hearsay. Go  
[20] ahead.

[21] BY MR. ROTHSCHILD:

[22] Q: Do you recognize the handwriting on these two  
[23] pages?

[24] A: No.

[25] Q: Do you recognize the documents?

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[1] tentative language for the curriculum that  
[2] everyone agreed on. I did have my secretary  
[3] enter that language into the draft curriculum  
[4] guide and then it was put on hold, because what  
[5] happened, in the meantime the agreement here  
[6] was that Mr. Buckingham would be okay with the  
[7] books if those two policies were looked at by  
[8] Mrs. Brown and this curriculum language came  
[9] in.

[10] Shortly after this meeting Mr. Buckingham  
[11] withdrew his approval of the books. So in my  
[12] mind everything was off the table, we were back  
[13] to square one on, okay, how do we proceed to  
[14] answer additional concerns. So I did nothing  
[15] with this.

[16] Q: And then what happened after that as regards  
[17] the purchase of the biology book and the  
[18] biology curriculum? So walk me through  
[19] chronologically.

[20] A: After that — well, there's another meeting in  
[21] July.

[22] Q: I have notes here at Page 58. Are those notes  
[23] from that meeting?

[24] A: No, that's an August, 2004 meeting, 58.

[25] Q: Do you know if there are notes from a July

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[1] meeting?

[2] A: Yeah. Oh, no, there isn't a meeting in July,  
[3] is there? The first meeting in June presented  
[4] the textbooks. I don't think there was a  
[5] meeting in July.

[6] Q: Okay. Of the curriculum committee?

[7] A: Right.

[8] Q: And just —

[9] A: But if there was a meeting there would be  
[10] notes.

[11] Q: Okay. And just to try and put, you know, some  
[12] time frames on this. August 2nd is the meeting  
[13] — the full school board meeting at which the  
[14] Miller Levine book is voted in, there's some  
[15] back and forth votes, because I think there's  
[16] only eight people there, not nine and it's four  
[17] to four and then eventually the votes change  
[18] and the Miller Levine book is voted in. Do you  
[19] remember that?

[20] A: Yes.

[21] Q: So from this June 24th meeting till August 2nd  
[22] are there any meetings of the board curriculum  
[23] committee?

[24] A: No, I don't think so.

[25] Q: In this time period is there any action on the

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[1] issue of changing the biology curriculum?

[2] A: No. Then the next thing, without a July  
[3] meeting, the next thing that would have  
[4] happened is there was a meeting at the end of  
[5] August with the teachers when they came back to  
[6] discuss the use of the Panda book.

[7] And at that meeting Dr. Nilsen — I was  
[8] away from the end of July till like the middle  
[9] of August. So this meeting — the meeting for  
[10] the end of August was set up by Dr. Nilsen.

[11] And at that meeting Dr. Nilsen presented  
[12] the draft of the curriculum language from the  
[13] meeting on 6/24. And at that meeting Mrs.  
[14] Spahr expressed surprise that intelligent  
[15] design was in there.

[16] Q: And you were at this meeting, the August  
[17] meeting?

[18] A: Yes, yes.

[19] Q: Are the notes that we have here on Page 58, are  
[20] those notes from that meeting?

[21] A: Yes. So what was decided then, Mrs. Spahr was  
[22] saying, no, we didn't agree to this, this isn't  
[23] language that we would recommend. So out of  
[24] this meeting the board curriculum committee  
[25] then directed me to work with the teachers to

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[1] draft new language.

[2] Q: Were you surprised that Ms. Spahr took the  
[3] position she did about the intelligent design  
[4] language?

[5] A: Yes.

[6] Q: You had understood from the June meeting that  
[7] she had signed on to that language?

[8] A: Yes.

[9] Q: Did she explain why she was opposed to that  
[10] language?

[11] A: I remember her just making a point that we were  
[12] never — teachers were never consulted about  
[13] this and I was surprised at that because that  
[14] was the topic of the June meeting.

[15] Q: Did she discuss the topic of intelligent design  
[16] substantively in terms of, you know, what she  
[17] thought about it?

[18] A: I don't believe so.

[19] Q: Did anybody at that meeting in August make the  
[20] case for why intelligent design should be part  
[21] of the curriculum?

[22] A: No.

[23] Q: And am I correct in understanding that from a  
[24] substantive level in terms of sort of  
[25] explaining why intelligent design belongs in

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[1] the curriculum, nobody has ever done that in  
[2] any meetings of the board or the board  
[3] curriculum committee?

[4] A: Nobody has —

[5] Q: Said here's why we should present intelligent  
[6] design to the students.

[7] A: Intelligent design was suggested just to be as  
[8] an example of one of the other theories,  
[9] alternative theories other than Darwin's.

[10] Q: Mr. Baksa, I could suggest that another theory  
[11] of the development of species is they were all  
[12] made out of playdough, right, I mean I could  
[13] say that, right, and you would agree with me  
[14] that that's a scientifically unsound  
[15] proposition? Is that fair?

[16] A: Are we talking about playdough now?

[17] Q: I'm not talking about the philosopher. I'm  
[18] talking about the stuff that's like clay.

[19] A: In the discussions about language that we would  
[20] use, intelligent design was brought up as when  
[21] we're making students generally aware of other  
[22] theories, intelligent design was brought up as  
[23] an example. And I don't remember presenting it  
[24] in that way that being challenged. I think  
[25] that was generally accepted.

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[1] Q: Okay. But I assume that when you're trying to  
[2] develop science curriculum you're actually —  
[3] and you're making students aware of other  
[4] theories you're trying to make them aware of  
[5] scientific theories, correct?

[6] A: Yes. And it was my understanding at the June  
[7] meeting that the teachers were okay with  
[8] language that included intelligent design. So  
[9] I would have — again, my goal was to try to  
[10] come to some agreement between the concerns of  
[11] the board and the language teachers could live  
[12] with. So I thought we — that was acceptable  
[13] to them.

[14] Q: Okay. But at that June meeting nobody  
[15] explained what intelligent design was or what  
[16] its status was in the scientific community at  
[17] large or anything like that?

[18] A: I don't remember any of them doing that.

[19] Q: And that never happened after that either,  
[20] correct, as far as you know?

[21] A: Yes.

[22] Q: I'm correct?

[23] A: You're correct.

[24] Q: And originally it was your understanding that  
[25] the science teachers were okay with this

[1] language, but in August it turned out that  
[2] regardless of what they had said before,  
[3] they're not okay with it?

[4] A: Correct.

[5] Q: And other than Ms. Spahr indicating that the  
[6] teachers hadn't been consulted and didn't agree  
[7] with this, did she explain what's wrong with  
[8] intelligent design?

[9] A: Mrs. Spahr from the very beginning, from  
[10] documents 897, which include reference to  
[11] intelligent design, in my conversations with  
[12] Mrs. Spahr she made no distinction between  
[13] intelligent design and creationism. For her  
[14] they were synonymous.

[15] Q: And did she explain why she held that view?

[16] A: From her research that she had done she felt  
[17] that legally we would not be able to teach  
[18] intelligent design because it's just  
[19] creationism.

[20] Q: And did she express that view at either this  
[21] June board meeting or — the June curriculum  
[22] committee meeting or the August curriculum  
[23] committee meeting?

[24] A: I know she did to me. I'm not sure if she did  
[25] at either of those other meetings.

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[1] Q: In these notes from this August meeting on Page  
[2] 58 it says, Call Russell - did they say what  
[3] schools are using it.

[4] Did you make an inquiry to the solicitor  
[5] about whether other schools were using this  
[6] textbook?

[7] A: We did ask our solicitor to see if there were  
[8] any other schools using the book, to give us an  
[9] opinion on its use as a classroom set or to  
[10] distribute it to each individual student, if  
[11] there were any cases involving the teaching of  
[12] intelligent design and also asked for a  
[13] specific law firm's history.

[14] Q: And was that the Thomas More Law Center?

[15] A: I think so, yes.

[16] Q: In terms of finding out whether other schools  
[17] used it, did you get an answer to that  
[18] question?

[19] A: The only school that I found — that came to my  
[20] attention that used it was Tomball.

[21] Q: Did you also make a call to anybody at Liberty  
[22] University relating to intelligent design or  
[23] Pandas, a Dr. Gillen maybe?

[24] A: Yes. Dr. Gillen taught at Tomball.

[25] Q: In the answers to interrogatories it says that



[1] you consulted with Dr. Gillen, believed to be  
 [2] currently at Liberty University, regarding use  
 [3] of Pandas and People in connection with  
 [4] instruction in high school biology.  
 [5] A: Right.  
 [6] Q: What was the reason you called Mr. Gillen?  
 [7] A: To find out how he used the Pandas and People  
 [8] book in the classroom.  
 [9] Q: And was the reason you called him because he  
 [10] had previously been involved at Tomball?  
 [11] A: Yes.  
 [12] Q: So it's not because he's at Liberty?  
 [13] A: Right.  
 [14] Q: It's just because he's involved with Tomball?  
 [15] A: That's correct.  
 [16] Q: Then about three-quarters of the way down the  
 [17] page there's a line that starts with Alan.  
 [18] Could you tell me what — I assume that's a  
 [19] reference to something Alan Bonsell said?  
 [20] A: Yeah, those are my notes. Here I think Alan is  
 [21] asking that something be put into the  
 [22] curriculum, that teachers teach holes in  
 [23] Darwin's theory and that it's not only not  
 [24] flawless, but also that the teachers show the  
 [25] flaws.

[1] Q: And then what does it say after that?  
 [2] A: The next line?  
 [3] Q: Yes.  
 [4] A: That's Sheila buying Rich lunch anyway, which  
 [5] has nothing to do with anything.  
 [6] Q: Who's Rich?  
 [7] A: Dr. Nilsen.  
 [8] Q: And what was the upshot of this meeting in  
 [9] terms of developing curriculum?  
 [10] A: After this meeting I was to work with the  
 [11] teachers and develop a draft and then send that  
 [12] to the board for their review.  
 [13] Q: And was the understanding that you would  
 [14] develop a draft along the lines of what Alan  
 [15] Bonsell had suggested?  
 [16] A: Yes.  
 [17] Q: Was there any understanding of whether  
 [18] intelligent design was going to be mentioned in  
 [19] that curriculum — in the curriculum?  
 [20] A: Well, my first step was to produce a draft with  
 [21] the teachers. So I would take their draft and  
 [22] show it to the board and then the board would  
 [23] work on a draft of their own that included the  
 [24] language. So what was going to be put in there  
 [25] at this point wasn't determined.

[1] Q: And there was no instruction or recommendation  
 [2] to the board about whether intelligent design  
 [3] would or would not be included?  
 [4] A: Not at this meeting.  
 [5] Q: Evolution is only one of the scientific  
 [6] concepts that's taught to Dover High School  
 [7] students, correct?  
 [8] A: Yes.  
 [9] Q: And there's many other concepts in biology and  
 [10] there's many other concepts in other science  
 [11] classes, right?  
 [12] A: Yes.  
 [13] Q: And evolution is generally considered a  
 [14] scientific theory, correct?  
 [15] A: Yes.  
 [16] Q: And there are other scientific theories that  
 [17] are also taught to students, correct?  
 [18] A: Yes.  
 [19] Q: So far as you know, does evolution — is  
 [20] evolution any more — have any less status in  
 [21] the scientific community or is it known to have  
 [22] more problems than other scientific theories  
 [23] which are taught to students in Dover?  
 [24] A: I think evolution in public schools is  
 [25] generally known to be controversial and

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[1] sensitive.  
 [2] Q: And why is that? Is it because of scientific  
 [3] deficiencies or because — well, what's your  
 [4] understanding of why it's sensitive and  
 [5] controversial?  
 [6] A: I don't know.  
 [7] Q: Do you know whether its sensitivity and  
 [8] controversy arises out of the fact that it is  
 [9] perceived to be inconsistent with some people's  
 [10] religious beliefs?  
 [11] A: Could you ask that again? I mean, I'm aware of  
 [12] generally evolution being a theory in public  
 [13] schools that typically is questioned by parents  
 [14] and students, feeling that the theory is not a  
 [15] fact and may not be the way things occur.  
 [16] What I'm not aware of, what specifically  
 [17] might motivate any individual to make that.  
 [18] I'm just generally aware that people are  
 [19] sensitive to the theory of evolution and what  
 [20] it proposes.  
 [21] Q: Do you have an understanding of what the word  
 [22] theory means in science?  
 [23] A: Roughly.  
 [24] Q: And what's that understanding?  
 [25] A: And that would be from my work in drafting the

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[1] statement that was read to students in the  
[2] biology classes, that a theory in science is a  
[3] general conclusion or assumption drawn after  
[4] observation.

[5] Q: And, you know, the students are being taught  
[6] it's a theory, not a fact. And that language  
[7] is not being used for any other theory that's  
[8] being taught to Dover students, correct? The  
[9] curriculum hasn't changed so that students are  
[10] told that germ theory is a theory, not a fact,  
[11] or the theory of gravity is a theory, not a  
[12] fact, or atomic theory is a theory not a fact.  
[13] Right?

[14] A: That's correct.

[15] Q: Only evolution is being singled out. Is that  
[16] fair?

[17] A: That's correct.

[18] Q: Has anybody in the board ever communicated why  
[19] of all the scientific concepts being taught to  
[20] Dover students evolution is being singled out  
[21] for the qualification that it's a theory, not a  
[22] fact?

[23] A: Not to me.

[24] Q: And in your understanding of the scientific  
[25] terms of theory and fact, could a scientific

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[1] theory ever graduate to a fact?

[2] A: I have no idea in the scientific world what  
[3] qualifies something to move from one stage to  
[4] another or even what the definition of either  
[5] of them might be in the scientific world.

[6] Q: Did any school board member ever explain why  
[7] they wanted language that it was a theory, not  
[8] a fact?

[9] A: Nothing other than they felt that that was an  
[10] erroneous presentation in the textbook, to  
[11] present it as such.

[12] Q: What was erroneous?

[13] A: That it was being presented as a fact when, in  
[14] fact, it's a theory that still hasn't been  
[15] ultimately proven to be a fact.

[16] Q: In all the page sites that school board members  
[17] called to your attention did they ever show you  
[18] text in the textbook that was adopted in which  
[19] evolution was called a fact, not a theory?

[20] MR. GILLEN: Objection to the  
[21] characterization of his testimony to the extent  
[22] it implies more than one board member did that.  
[23] Answer, Mike.

[24] A: Could you —

[25] BY MR. ROTHSCHILD:

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[1] Q: Did any school board member ever pick up this  
[2] textbook and say, look, in here it says that  
[3] evolution is a fact, not a theory or it's a  
[4] fact and a theory? Is there any text that they  
[5] pointed you to that made that assertion?

[6] A: I don't remember specific pages, but I do think  
[7] I remember both Mr. Bonsell — I know for sure  
[8] Mr. Bonsell felt that there was language in  
[9] there — I remember him saying that there was  
[10] talk about evolution without saying it's a  
[11] theory, that they were omitting the word  
[12] theory. So he felt that strengthened the case  
[13] to present it as a fact. And Mr. Bonsell would  
[14] have been looking at the edition before the  
[15] 2002.

[16] Q: But that wouldn't really matter for the  
[17] curriculum item you developed because the  
[18] edition you were using was the 2004 edition,  
[19] correct?

[20] A: In August, yes.

[21] Q: And Mr. Baksa, I'm looking at the teacher's  
[22] version of the biology textbook, but I am  
[23] fairly confident that in this respect it's  
[24] similar to the student's version, that, in  
[25] fact, the heading, as you start your study of

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[1] evolution, is Darwin's Theory of Evolution.

[2] A: Um-hum.

[3] Q: So in that respect it's not misleading the  
[4] students at all, it's in marquee and klieg  
[5] lights presented as a theory, correct?

[6] A: I have no idea.

[7] Q: Do you understand intelligent design to be a  
[8] scientific theory?

[9] A: I understand professors like Michael Behe at  
[10] Lehigh University are either proponents or  
[11] researchers for intelligent design. My  
[12] knowledge of intelligent design and the  
[13] scientific community is fairly limited. I  
[14] haven't been exploring it for a long period of  
[15] time. So I don't know that I could fully  
[16] answer that other than knowing a few  
[17] individuals who are involved in intelligent  
[18] design.

[19] Q: Do you understand that there's a distinction  
[20] between something that scientists say and  
[21] something being a scientific theory? Not  
[22] everything scientists say is a scientific  
[23] theory. You would agree with that, right?

[24] A: Okay.

[25] Q: Do you agree with that or do you just not know

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[1] one way or the other?

[2] **A:** I mean, I'm not in a position to judge what the  
[3] scientific community, how they — the standards  
[4] they set and the judgments they make about  
[5] their colleagues and their research and the  
[6] status it has. I just have no knowledge of  
[7] that.

[8] **Q:** And how would you — what would it take for you  
[9] to feel qualified to answer the question  
[10] whether intelligent design is a scientific  
[11] theory? What expertise would you feel you  
[12] would have to have or what resource would you  
[13] feel you would need to look to to make a  
[14] determination for yourself whether intelligent  
[15] design is a scientific theory?

[16] **A:** I don't know.

[17] **MR. GILLEN:** Objection. It calls for  
[18] speculation. If you can answer, do.

[19] **A:** Yeah, I don't know.

[20] **BY MR. ROTHSCILD:**

[21] **Q:** Do you feel that you could make a judgment  
[22] about whether intelligent design is, in fact, a  
[23] scientific theory by listening to the opinions  
[24] of the members of the Dover Area School Board?

[25] **A:** I wasn't making — I wasn't asked to make a

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[1] judgment. What I was asked to do was to work  
[2] with the board curriculum committee and the  
[3] whole board and the teachers to develop  
[4] language that was agreeable in the curriculum,  
[5] to find a textbook that was agreeable to both  
[6] and to develop a statement that would be read  
[7] to the students that would be agreeable to them  
[8] and that was my role.

[9] **MR. ROTHSCILD:** Can we mark this as an  
[10] exhibit, please?

[11] (P Deposition Exhibit Number 19 marked for  
[12] identification.)

[13] **BY MR. ROTHSCILD:**

[14] **Q:** Do you recognize the document we've marked as  
[15] P-19?

[16] **A:** Yes.

[17] **Q:** And what is it?

[18] **A:** This is a news release that the district sent  
[19] to all of our residents.

[20] **Q:** And who prepared this document?

[21] **A:** Dr. Nilsen.

[22] **Q:** Did you have any involvement with it?

[23] **A:** No.

[24] **Q:** Do you know if anybody else had any involvement  
[25] with it?

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[1] **A:** I believe my secretary Amy Aumen formatted it.

[2] **Q:** Do you know whether Mr. Nilsen created this on  
[3] his own or with the aid of others?

[4] **A:** I believe he created this in conjunction with  
[5] Thomas More.

[6] **Q:** If you turn to the second page there is a  
[7] frequently asked question, What is the theory  
[8] of Intelligent Design. And it says, The theory  
[9] of intelligent design is a scientific theory  
[10] that differs from Darwin's view and is endorsed  
[11] by a growing number of credible scientists.

[12] Do you know what the Dover Area School  
[13] District based its assertion that intelligent  
[14] design is a scientific theory on?

[15] **A:** No.

[16] **Q:** Going back to the development of curriculum.  
[17] Out of this August meeting you had taken on the  
[18] task to develop an edition to the curriculum  
[19] with the teachers, correct?

[20] **A:** Yes.

[21] **Q:** And did that, in fact, occur?

[22] **A:** Yes.

[23] **Q:** And in terms of who actually created the text  
[24] for it, who did that, you, the teachers or  
[25] both?

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[1] **A:** I wrote a first draft and I gave it to the  
[2] teachers.

[3] (P Deposition Exhibit Numbers 20 and 21  
[4] marked for identification.)

[5] **BY MR. ROTHSCILD:**

[6] **Q:** Do you recognize the two exhibits we've marked  
[7] as 20 and 21?

[8] **A:** 20 and 21? I don't have those.

[9] **Q:** Exhibits 20 and 21.

[10] **MR. GILLEN:** Yes, you do.

[11] **A:** Oh, oh.

[12] **BY MR. ROTHSCILD:**

[13] **Q:** And are these the product of your work with the  
[14] science department on developing a modification  
[15] to the biology curriculum?

[16] **A:** Yes, but not entirely.

[17] **Q:** And what's missing?

[18] **A:** There's another teacher draft.

[19] **Q:** And chronologically here where does that  
[20] teacher draft fall, before September 20th,  
[21] before September 21st?

[22] **A:** It would be a draft created on October 18th.

[23] **Q:** October 18th, okay. So up till — sorry, I'll  
[24] back up. Am I correct that the documents we're  
[25] looking at as 20 and 21 are identical except